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his own person. *State v. Harris* (Del.), 58 Atl. 1042. Under sec. 3346a, Va. Code Anno., neither husband nor wife shall be compelled, nor without the consent of the other, allowed to testify against the other. This act does not change the rule of common law of the competency of the wife to testify against her husband in regard to offences alleged to have been committed by him on her. *Davis' Case*, 99 Va. 838.

CONSTITUTIONAL LAW—TAKING PROPERTY WITHOUT COMPENSATION—MEASURE OF DAMAGES—SEC. 58 CONS. VA. 1902.—In *Biedler v. Sanitary Dist. of Chicago* (Ill.), 71 N. W. 1198, under a constitutional provision similar to that clause of sec. 58, Cons. Va. 1902, forbidding the damaging of private property without just compensation, it was held that where property has been damaged, though not taken, by public improvement, and the damages are of such a character that a recovery may be had, the measure of damages is the difference between the value of the property before the improvement and the value of the property thereafter, citing *Springer v. City of Chicago*, 135 Ill. 552, 26 N. E. 514, 12 L. R. A. 609; *City of Elgin v. Eaton*, 83 Ill. 535, 25 Am. Rep. 412; *Chicago & Pacific Railroad Co. v. Francis*, 70 Ill. 238; *Chicago, Milwaukee & St. Paul Railroad Co. v. Hall*, 90 Ill. 42; *St. Louis, Vandalia & Terre Haute Railroad Co. v. Haller*, 82 Ill. 208; *St. Louis, Vandalia & Terre Haute Railroad Co. v. Capps*, 67 Ill. 607; *Eberhart v. Chicago, Milwaukee & St. Paul Railway Co.*, 70 Ill. 347; *Chicago & Alton Railroad Co. v. Maher*, 91 Ill. 312; *Chicago & Eastern Illinois Railroad Co. v. Loeb*, 118 Ill. 203, 8 N. E. 460, 59 Am. Rep. 341; *Chicago & Pacific Railroad Co. v. Stein*, 75 Ill. 41; *Page v. Chicago, Milwaukee & St. Paul Railway Co.*, 70 Ill. 324.

STATEMENT OF PARTICULARS—QUERE, AS TO THE EFFECT OF A PARTY'S FAILURE TO FILE—SEC. 3249, VA. CODE ANNO.—What is the effect of a party's failing to file a statement of particulars, when required to do so by the court in accordance with sec. 3249, Va. Code Anno.? That section reads as follows: "In any action or motion, the court may order a statement to be filed of the particulars of the claim, or of the ground of defence; and if a party fail to comply with such order, may, when the case is tried or heard, exclude evidence of any such matter not described in the notice, declaration, or other pleading of such party, so plainly as to give the adverse party notice of its character." The object of requiring the plaintiff to file a statement of the particulars of his claim has been stated to be "to give the defendant full notice of the subject or character of the claim," and "if the declaration did not present distinctly the grounds or subject of the action" to require the plaintiff to "file such a statement of particulars as would put the defendant in possession of the character thereof." *City of Richmond v. Leaker*, 99 Va. 1, 7. The object of requiring the defendant to file a statement of the grounds of his defence is to give the plaintiff reasonable notice of the particular defence upon which the defendant expects to

rely, and to prevent surprise; but the specification of defences does not convert the general issue into a special plea, or a negative plea into an affirmative one. The whole object and effect thereof is to limit the scope and operation of the general issue, and to confine the introduction of evidence to the particular defence which the defendant has disclosed. The burden of proof is still on the plaintiff. *Oeters v. Knights of Honor*, 98 Va. 201, 203.

In a Pennsylvania case, it was said that where a plaintiff refused the order of court to furnish a bill of particulars, ordinarily a stay of proceedings would be sufficient remedy for such disobedience, but in a proper case, the court might enforce its order by attachment. *Lawrence v. Keim*, 45 Leg. Int. 434. In Michigan, it is held that where a plaintiff refuses to comply with the order of the court to file a bill of particulars, where properly demandable, the court may exclude the testimony on his part and dismiss the case, such refusal being a virtual discontinuance of the suit. *Lovette v. Essig*, 92 Mich. 460; *Peterson v. Tilden*, 44 Mich. 169. In 3 Encyc. Pl. & Pr. 538, it is said that it was formerly the rule that where a plaintiff failed to comply with the order of court to furnish a statement of particulars, the adverse party was excused from pleading until it was furnished; but that it is not so now, unless by virtue of a special rule or order of court. This rule operates all right for the defendant, when the plaintiff disobeys; but is not broad enough to help the plaintiff when the defendant refuses to file his grounds of defense. The authority last quoted (p. 539) says that an appropriate remedy is generally given by statute or rule of court in the form of motion for judgment or *non pros.* or dismissal, if either party is in default. Our statute seems to contemplate that the effect shall be merely to prevent the introduction of evidence of matters not described in the pleadings. This seems to be effectual enough to cause the plaintiff always to file his statement of particulars; but is it sufficient in case the defendant fails to do so? Suppose the plea is non-assumpsit and the defendant fails to file the statement of particulars, is there no way to require him to do so? From *Oeters v. Knights of Honor*, *supra*, the burden of proof is still on the plaintiff, and therefore he must first establish his case. It will not benefit the plaintiff to say that he may have the case deferred till the defendant complies with the order of court; for that would allow the defendant to take advantage of his own wrong. The reasonable effect to be given to the statute seems to be that the defendant in such a case will not be allowed to set up any defense at all; and if the plaintiff can make out a *prima facie* case, that is sufficient. Unless such effect is given thereto, then it would seem that the defendant is in contempt of court and may be proceeded against accordingly. C. B. G.

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—QUÆRE, IS NOT SEC. 2086, VA. CODE ANNO., CL. 4, UNCONSTITUTIONAL AS TO THE FORFEITURE PROVIDED THEREIN?—Sec. 2086, Va. Code Anno., prescribes for the granting to residents the license to fish with purse nets, pound nets, etc., upon the payment of a license tax and fee to the inspector. Clause 4 provides that if